

**COURT AND BOARD-ORDERED
BACKPAYS**

PROCEDURES:

The following procedures have been compiled to guide payroll officers through the maze of details associated with backpays. Note that these procedures apply to court-ordered or board-ordered payments. Although the intent has been to be as thorough as possible, each situation is unique. Should an order be issued that these procedures do not cover, contact a member of the Personnel Cabinet's Payroll Branch for assistance.

Payroll documents in these cases must be accompanied by the complete legal history for that individual. When you forward the court or board-ordered reinstatement payroll documents, you must include any recommended order and final order from the Personnel Board and from court orders.

In addition, you must indicate which order is final. For example, include any denials or discretionary review by the Kentucky Supreme Court. The complete legal history will include the following documents:

1. Personnel Board recommended order.
2. Personnel Board final order.
3. Circuit Court Judgment (if one was rendered).
4. Court of Appeals Judgment (if one was rendered).
5. Kentucky Supreme Court Judgment (if one was rendered).

Other required documents are:

1. Employee Affidavit.
2. Backpay Worksheets.
3. Recap Sheet.
4. W-2 Copies.
5. Income Tax Return Copies.
6. Payroll Voucher (DOA-27).
7. Manual Pay Transactions.
8. Statement from Agency indicating the date through which the employee is made whole.
9. DOA-27 Certification Form.
10. Personnel Action Worksheet.

****Note:** Agencies must use the attached forms. Substitutes will not be accepted.
Two copies of each of the above documents are needed.

DEFINITIONS:

Several terms will be used repeatedly in these procedures. They are defined as follows:

1. **Gross Pay:** The total amount of pay which the employee would have earned during the time of the personnel action had such action not been taken.
2. **Offsetting Income:** Income earned by the employee from other employment sources during the time of penalty.
3. **Penalty:** Unjustified personnel action: synonymous terms for the action taken by the appointing authority against the employee including dismissal, suspension, and demotion and for which the employee successfully appealed to the Court or Personnel Board.
4. **Adjusted Gross:** The amount the state owes the employee; derived by gross minus the offsetting income.

COMPUTING THE BACKPAY:

The backpay due an employee for the period of penalty is the monthly pay rate at the time of penalty plus any changes to his classification during the period of penalty plus annual increments and any other changes which would affect the amount of compensation due the employee. In the case of an hourly employee, use the number of hours in each month times the hourly rate, to calculate the monthly pay rate. The payroll officer itemizes the amount due the employee before offsets. This should be broken down by month. See attached example.

DEDUCTIONS:

Retirement - Retirement is paid on the total gross pay due employee before offsets, unless the employee was employed by the State during the penalty period and paid retirement into the system. In this case, you need to request wage reports from the Kentucky Retirement Office, and you only pay retirement on the difference. Interest must be paid on the employee and employer share of retirement by the Employer. The Retirement Office will figure the amount of interest due, but you must notify them of the amounts due by months from the state. If a dismissed employee has drawn retirement benefits during the period of dismissal, notify the Retirement Office of this fact.

Unemployment - If the employee was paid unemployment during the period, a deduction must be made from his check and made payable to the Unemployment Fund. It is not used as an offset. The amount of unemployment the employee drew should be verified with the local Unemployment Office (564-2387).

Social Security - Social security is paid on the adjusted gross. You must use the rate applicable for the current year.

For FICA reporting to the State Social Security Office, you must prepare the following:

- A breakdown of the wages earned for each year.
- The amount of employee retirement contributions for each year beginning with 1987.

These forms are to be forwarded to the State Social Security Office.

Federal Taxes - The total employee retirement deduction is subtracted from gross wages before figuring the federal taxes. The method used to figure the federal taxes can be the current federal tax schedule or the flat 27.50% method, if the employee is subject to withholding.

State Taxes - Employee retirement is subtracted from gross wages before figuring. The current State Tax schedule or the flat 6% method can be used, if the employee is subject to withholding.

Local Taxes - Local taxes are withheld at the current rates.

Health Insurance - The State's share of Health Insurance is paid to the Insurance Company. The rates to pay are the appropriate state's share for each year of penalty.

The State's share for insurance for each year is as follows:

October 1978	\$21.06	January 1986	\$60.22	November 1992	\$168.91	January 1999	\$203.00
October 1979	\$23.60	November 1986	\$69.79	July 1993	\$158.78	January 2000	\$214.00
October 1980	\$28.86	November 1987	\$79.71	January 1994	\$158.78	January 2001	\$234.00
October 1981	\$39.84	November 1988	\$89.07	January 1995	\$168.00	(Based	\$252.46
October 1982	\$46.10	November 1989	\$102.96	January 1996	\$175.50	on	\$273.52
October 1983	\$49.00	November 1990	\$124.27	January 1997	\$185.00	County)	\$293.46
January 1985	\$53.82	November 1991	\$150.00	January 1998	\$194.50		

In some cases, the court order requires you to pay the insurance premium to the employee. If the premiums are paid to the Insurance Company, and the employee has paid during the time of penalty, he will be refunded the amount paid. If an employee has not paid his insurance during the penalty period, and has had claims not paid, he will be able to refile for these claims, and should be able to collect.

Life Insurance - The State's share for the \$20,000 free life insurance is paid to the Insurance Company.

Annual and Sick Leave Time - The employee is to have all leave he would have earned during the penalty period restored to his record. He is also entitled to all leave balances he was not paid for on dismissal.

Manual Payroll & Documentation Required - If you are paying an employee both prior year and current year wages, it can be done on the same payroll voucher (DOA-27). All wages must have a manual pay update with it to input into the current year UPPS record. Copies of the Court Order, Affidavit, compilation of wages, and any other supporting documentation must be forwarded with the payroll voucher to the payroll section in the Personnel Cabinet.

Checks - The Personnel Cabinet and/or Department of Treasury will forward to you the checks for the employee, the insurance checks and the unemployment check. Letters should be written to the Insurance Companies and the Unemployment Office specifying what the checks are for.

The current year UPPS record should be updated with all the information from the backpay check. UPPS will produce the W-2. If the employee does not have an active payroll record, a master should be established to record this information.

SPECIAL NOTES:

1. Any agreement between the employee and the Agency which alters the Court or Board Order currently in effect must be reviewed and signed by the Court or the Board.
2. These procedures were compiled from many sources, including, but not limited to, The Research of America Payroll Guide, Kentucky Revised Statutes (Chapter 18A. 125, 45.231, 61.569) and the Kentucky Administrative Regulations (200 KAR 12:010).

BACK PAY UNDER A STATUTE:

State agencies must determine if the wages being paid for prior years are considered back pay under a statute. Back pay under a statute is any payment made by an agency pursuant to an award, determination or agreement approved or sanctioned by a court or administrative agency charged with enforcing a federal or state statute protecting an employee's right to employment or wages.

IRS and SSA treat back pay under a statute in different ways. IRS considers back pay under a statute as wages for the year in which the back pay award is paid. Agencies should withhold the applicable taxes and report the back pay on the current year's Form W-2. The W-2 should show the back pay, in addition to any current year's wages, as wages for the year in which it was paid.

SSA treats back pay under a statute as wages paid in the periods in which they have been paid. SSA will allocate the back pay amounts to the appropriate years after the original Form W-2 is processed and the back pay information is submitted to SSA.

State agencies must complete Form SS-9 allocating the wages to the calendar year in which they should have been paid and send the form to the State Office for Social Security.

If you have any questions concerning what constitutes back pay under a statute or the required procedures, please call the State Office at (502) 564-3952.

**COMMONWEALTH OF KENTUCKY
EMPLOYEE'S AFFIDAVIT**

STATE OF KENTUCKY, COUNTY OF _____

I, _____, being first duly sworn and mindful of the laws and penalties of perjury, state the following:

(1) I was discharged from my position with the Department of _____
on _____, and was ordered to return to work on _____.

(2) At the time of my discharge, my salary was \$ _____ per month, my pay being \$ _____ per hour.

(3) List all employment engaged in during period of suspension in complete detail; including employer, period of employment, hourly wages, hours per week; with overtime separately designated. Also include total amount earned during the period of suspension with all W-2 Forms or a certified statement from the employer verifying the amount earned (See attached sheet to be completed in detail.)

(4) If self-employed during the period of suspension, state on the sheet below the type of employment, period of employment, place and amount earned. Also state whether this self-employment was engaged in prior to the period of suspension/dismissal. To verify the requested information, include copies of 19__ through 19__ State and Federal Tax Returns.

Type of Employment: _____

Period of Self-Employment: _____

Place of Self-Employment: _____

Was the self-employment engaged in prior to the period of suspension? _____

NOTE: To verify the requested information on self-employment, include copies of 19__ through 19__ State and Federal Income Tax Returns.

(5) During the period of my discharge, I was unavailable or unable to work at my position with the Department of _____ during the following period:

Reason:

Date From: _____ Date To: _____

(6) During the period of my discharge, I [sought] [did not seek] other employment. (Mark out which is not true.)

If your response to question #6 indicates an attempt to secure other employment, enumerate the instances on the form below:

Place employment was sought:

Name of firm contacted along with the individual with whom you spoke:

Date:

Type of employment sought:

Was the job offered as a result of your interview?

Place employment was sought:

Name of firm contacted along with the individual with whom you spoke: _____

Date: _____

Type of employment sought: _____

Was the job offered as a result of your interview? _____

Place employment was sought: _____

Name of firm contacted along with the individual with whom you spoke: _____

Date: _____

Type of employment sought: _____

Was the job offered as a result of your interview? _____

Place employment was sought: _____

Name of firm contacted along with the individual with whom you spoke: _____

Date: _____

Type of employment sought: _____

Was the job offered as a result of your interview? _____

(7) I [have] [have not] earned other income during the period of my discharge, except as stated herein. (Mark out which is not true.)

(8) During the period of my suspension, I received \$ _____ from the Unemployment Compensation Fund, \$ _____ from Social Security, and \$ _____ from the State Retirement Fund. (Explain in complete detail on an attached sheet.)

The foregoing and attached statements are true to the best of my knowledge. Subscribed and sworn to me by _____, on this the _____ day of _____.

Notary Public

(ATTACHMENT)

(3) Form to be filled out by those employed by others during the period of suspension:

Employer: _____

Date From: _____

Date To: _____

Rate of Hourly Pay: _____

Hours Per Week Worked: _____

Overtime Worked: _____

Total Amount Earned: _____

Employer: _____

Date From: _____

Date To: _____

Rate of Hourly Pay: _____

Hours Per Week Worked: _____

Overtime Worked: _____

Total Amount Earned: _____

NOTE: Also attach W-2 Forms or a certified statement from your employer(s) covering the period of employment.

Division of Social Security

Back Pay Under a Statute Report

Department Name: _____
Cabinet/Dept No: _____
Employee SSN: _____
Employee Name: _____
Date of back pay: _____ / _____ / _____
Payroll Voucher #-
Form DOA-27: PA
Payment Authority: _____

Cite the statute under which the back pay was made.

Year	Taxable Wages
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
Total	\$

Show the calendar year wages should have been paid and the amount to be allocated each year.

Agency Contact Person: _____
Phone No: _____

Please return this form
 to the Division of Social Security
 (502) 564-3952

Postal Mail:
 PO Box 557
 Frankfort, KY 40602

Messenger Mail:
 Lewis and Broadway
 Frankfort, KY 40601

NAME _____

SSN _____

PERIOD	SALARY	REMARKS

TOTAL SALARY _____

Gross Amount Due Before Offsets: _____

Offsetting Income: _____

Adjusted Gross Due Before Normal Deductions: _____

Employee ___ % Deduction for Retirement: _____

State _____

Annual Leave Due While Dismissed: _____

Sick Leave Due While Dismissed: _____

Leave Balances When Terminated: _____

VACATION:

SICK:

COMP:

Date

Group Life Insurance
200 Fair Oaks Lane
Suite 511, 5th Floor
Frankfort, Kentucky 40601

Attention: Ms. Sharon Spencer

Dear Ms. Spencer:

Attached is a check #P,459,452 in the amount of \$44.00. (Employee's Name) was dismissed from this Department on (Date) and ordered reinstated by the State Personnel Board (or Court Name) with all back pay effective (Date).

This check represents the state's share of life insurance for the period of dismissal.

If you have any questions, please let me know.

Sincerely,

Payroll Officer

Attachment

cc: (Employee)

Date

PlanSource
P. O. Box 27504
Lexington, KY 40524

Attention: (Agency Contact)

Dear (Agency Contact):

Attached is check #P,459,451 in the amount of \$1,548.20. This check represents the state's share of Blue Cross on (Employee's Name), (Social Security Number) for _____, 19__ through _____, 19__.

(Employee's Name) was ordered reinstated by the State Personnel Board and awarded back pay for this period.

I understand (Employee's Name) paid this insurance each month he/she was off, therefore he/she should be refunded this amount.

The breakdown of this money is as follows:

1 month @	\$23.60	Date
12 months @	\$23.86	Date through Date
12 months @	\$39.84	Date through Date
12 months @	\$46.10	Date through Date
3 months @	\$49.00	Date through Date

If you have any questions, please feel free to call me.

Sincerely,

Payroll Officer

Attachment

cc: . (Employee)

MEMORANDUM

TO: Elaine Masters
Unemployment Insurance
2nd Floor East, CHR Building
275 East Main Street
Frankfort, KY 40621

FROM: Payroll Officer

SUBJECT: (Employee's Name)

DATE:

The subject employee was discharged from his position on (Date), and was ordered reinstated by the State Personnel Board with all back pay effective (Date).

The attached check #P,2459,453 in the amount of \$_____ represents unemployment the employee was paid while off. We have paid him full pay for the entire period of dismissal.

If you have any questions, please let me know.

Attachment

**FORMULA FOR CALCULATING EMPLOYEE'S BACKPAY
ON COURT OR BOARD BACKPAYS;
(Follows Wording in 200 KAR 12:010).**

Gross Pay Due During Corrective Period-All Dollars Earned During Penalization

	Net Pay (Could be negative)
+	Overtime
+	Shift Differential
+	Maintenance
+	Second Job Income
+	Unemployment Insurance and/or Social Security Benefits
+	Military Pay
+	Termination Annual Pay
+	Self-Employment Expenses
+	Savings or Stocks Income

Net-Net Pay (To be issued to the employee)

Backpay=Gross Minus Set-Offs Plus Add-Ons